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In The

Supreme Court of the United States

October Term, 1991

CHESAPEAKE WESTERN RAILWAY, *et al.*,

Petitioners,

v.

TAX COMMISSIONER, VIRGINIA DEPARTMENT OF TAXATION, *et al.*,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the District Court correctly entered summary judgment against Petitioners, who contended that a federal statute prohibiting state tax discrimination against railroads *requires* a state to use a particular method for determining the fair market value of railroad real property even if that method alters the object of a general state tax as it applies to railroads?

2. Whether this Court should decline plenary review in a case where issues of collateral estoppel and *Younger* abstention cloud the record and may preclude any further review in federal court below?

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STATEMENT OF THE CASE

The question framed by Petitioners is whether the federal Railroad Revitalization and Regulatory Reform Act, 49 U.S.C. § 11503 (the "4-R Act"), authorizes a federal court challenge to a state's choice of methods for valuing railroad real property for local tax purposes. More specifically, Petitioners claim to be aggrieved by Virginia's assessment of railroad *real property*, because Virginia uses an "inventory and summation" method of valuing the property. This method, which requires that the fair market value of real property be determined according to its highest and best use in its particular

location, was retained at the behest of the railroads, and has been utilized in Virginia for more than ninety years.

In this case, under the guise of a 4-R Act challenge, Petitioners now seek a federal court order forcing the state to abandon its established inventory and summation method, requiring instead that Virginia adopt the "unit method" for property valuation. This method assigns railroad real property a "use value" based not upon the value of the land, but upon the railroad's net income. Respondents argued below and submit here that there is nothing in the language of the 4-R Act, or in any of this Court's prior decisions, that *requires* a state, as a matter of *federal* policy, to select one property valuation methodology over another, and that conclusion is the crux of the decisions below.

As the courts below recognized, it is clear that there is nothing inherently discriminatory about the inventory and summation method as a property valuation technique. There also was no evidence presented in the summary judgment record to suggest that Virginia adopted that methodology, or continued its use over time, in an effort to resist the Congressional directives embodied in the 4-R Act. Indeed, the question of how to value railroad property for property tax purposes has been frequently debated in the Virginia General Assembly. Railroad lobbyists have actively participated in the debate, and have successfully influenced the resulting legislation enacted by the Virginia legislature. For example, when Virginia considered adopting the "unit method" of valuing railroad property for local tax purposes during its 1901-1902 Constitutional Convention, the railroads' lobby opposed

the change and convinced the Convention delegates to retain instead the state's inventory and summation approach. *Norfolk & Western Ry. Co. v. Commonwealth*, 211 Va. 692, 699, 179 S.E.2d 623, 629 (1971). Virginia still was using that method when Congress passed the 4-R Act more than seventy years later. *Chesapeake Western Ry. v. Forst*, 938 F.2d 528, 529 (4th Cir. 1991).

Following the adoption of the 4-R Act by Congress, the 1978 Session of the Virginia General Assembly enacted S.B. 456, which was designed to bring Virginia into compliance with the 4-R Act in a timely fashion. This legislation repealed a gross receipts tax applicable only to railroads, and extended to railroads the state income and franchise taxes that other corporations operating in Virginia paid. Va. Dept. of Taxation, Research Division, *1978 Legislative Digest* 3-4 (May 1978). Significantly, no state or federal court has ever invalidated any Virginia tax law or policy as violative of the 4-R Act.

From the turn of the century until 1984, the state agency in Virginia responsible for determining the fair market value of railroad property for local tax purposes was the Virginia State Corporation Commission (the "SCC"). The SCC used the inventory and summation method exclusively during this entire period.[1] In 1983,

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[1] The SCC calculated the fair market value of railroad land by comparing it with adjacent property. This "across-the-fence" method based the value of the railroad realty on the value of the immediately adjacent land. At the request of the railroads, the SCC adopted the Interstate Commerce Commission's parcelization of railroad land for its across-the-fence

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the Virginia General Assembly transferred the duty of assessing railroad property to the Virginia Department of Taxation (the "Department"). Ch. 570, 1983 Va. Acts 768-777. Although the transfer legislation did not authorize a change in assessment methodology, the Department began using the unit method in its annual assessments of railroad property, and determined the 1984 railroad assessments under this method. The new assessments were challenged by several local governments, including Arlington County and the City of Alexandria, which filed suit against the Commonwealth of Virginia and the Richmond, Fredericksburg and Potomac Railroad Co. ("RF&P"). Alleging that the use of the unit method violated Article X, Section 2 of the Constitution of Virginia (1971),[2] the localities sought a judgment ordering a return to the inventory and summation method for determining the value of railroad property. *See County Board of Arlington v. Commonwealth of Virginia, et al.*, 240 Va. 108, 393 S.E.2d 194 (1990) [hereinafter *County Board*].

The Supreme Court of Virginia agreed with the localities' argument that the unit method provides only a "use value" for the railroads' real estate, "influenced by

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appraisal purposes. The value of all other railroad property was based on the original investment, minus a fixed percentage of that investment – which varied depending on the property – as an allowance for depreciation. *See Forst*, 938 F.2d at 529.

[2] Article X, Section 2 provides, in part, that "[a]ll assessments of real estate and tangible personal property shall be at their fair market value. . . ."

many elements unrelated to the land and its improvements," and "does not produce the fair market value of the specific property being appraised." *Id.* at 112-113, 393 S.E.2d at 196-97. The Court struck down the unit method as violative of the fair market value requirement of the Virginia Constitution, declared the assessments of RF&P's property invalid, and ordered further proceedings in the state trial court for a redetermination of the assessments. *Id.* at 114, 393 S.E.2d at 197. Since the remand, other localities have filed state court suits against the Department and the railroads seeking a judicial determination of the value of the railroads' property in their respective jurisdictions. *See CSX v. Forst*, 777 F.Supp. 435, 441, 444 n.2 (E.D. Va. 1991).

RF&P did not assert a defense based on the 4-R Act in the state court proceedings, nor did it seek an appeal of the Supreme Court of Virginia's judgment to this Court. Instead, RF&P and the other Petitioners sought to stay the ongoing state court proceedings after filing the instant suit in federal district court asserting, in effect, that the unit method was the only accounting methodology permissible under the 4-R Act. Petitioners supported this contention with experts' affidavits and deposition testimony showing, at most, that an assessment of railroad property under the inventory and summation method would result in a greater aggregate value for railroad property than the value of the railroad as a business entity determined under the unit method. Aside from these conclusions, Petitioners offered no other evidence showing that the assessment under the inventory and summation method would not represent the fair market value of specific railroad properties.

Although the District Court was concerned that Petitioners were attempting to collaterally attack the Virginia Supreme Court's decision in *County Board, supra,* it did not expressly decide the case on that basis. The District Court, however, did grant summary judgment for Respondents, holding that "the language and legislative history of the Act make clear that it does not impose a particular method of taxation on the state," and that Petitioners' evidence did not create a factual issue on the claim of discriminatory taxation. *Forst,* 938 F.2d at 530. Petitioners appealed. The United States Court of Appeals for the Fourth Circuit affirmed, and denied a petition for rehearing on September 24, 1991.

The record in this case does not provide an appropriate vehicle for this Court to consider the issues Petitioners seek to raise. Congress clearly did not intend for the federal courts to displace a state's *policy* choice concerning the most appropriate method for determining true market value of railroad land at the whim of the railroads, and there is no evidence to suggest that Virginia adopted its methodology to circumvent the requirements of the 4-R Act. Furthermore, because the courts below decided the case on other grounds, the record in this case remains clouded with such questions as whether the Petitioners may be collaterally estopped from proceeding in federal court even if a remand were ordered, and whether the ongoing state court proceedings concerning the local tax assessments for the several Petitioners may require federal court abstention. For all of these reasons, plenary review by this Court is unwarranted, and the Petition for a Writ of Certiorari should be denied.

REASONS FOR DENYING THE WRIT

I. The Decision Below Was Correct

A. The 4-R Act Does Not Require or Preclude a Particular Form of Railroad Property Valuation.

Petitioners' primary argument (Pet. 11) is that if railroads cannot challenge the state's method of valuing railroad property, the state may select a method that is inherently discriminatory. This argument is flawed for several reasons. Initially, it builds on at least two suppositions that, although perhaps warranted in litigation from some other state that may come before the Court, simply are not true in this case.

While Congress may have found that the railroads' inability, as a general proposition, to protect their interests in state legislatures necessitated some form of intervention such as the 4-R Act, it does not necessarily follow that such conditions exist now, or ever existed, in Virginia. To the contrary, the railroad lobby has influenced Virginia legislation concerning the taxation of railroads, including the very issue in this case (*i.e.*, the method of valuing railroad property for local tax purposes, *See Norfolk & Western*, 211 Va. at 699, 179 S.E.2d at 629), and other significant issues.[3] Simply put, the railroad lobby has been effective in Virginia.

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[3] The unique apportionment of multistate railroads' income is another example. *Cf.* Va. Code §§ 58.1-408 and 58.1-420 (1991 Repl. Vol.). When § 58.1-420 was enacted, thirty (including the District of Columbia) of the thirty-six states that

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Petitioners also purport to include Virginia among those states they perceive as resisting the Congressional directives embodied in the 4-R Act (Pet. 4, 12). That characterization is baseless. Virginia enacted legislation that was designed to comply timely with the 4-R Act and that effected more than mere cosmetic changes to Virginia law, including repealing the railroad gross receipts tax, amending the sales tax to ensure continued exemption for the railroads, and extending the state income tax and state franchise taxes applicable to other industrial and commercial taxpayers to railroads. *See* Va. Dept. of Taxation, Research Division, *1978 Legislative Digest* 3-4 (May 1978). Moreover, no 4-R Act challenge to Virginia's taxation of railroads, whether in state or federal court, has been upheld to date (in addition to this case, *see RF&P v. SCC*, 230 Va. 260, 336 S.E.2d 896 (1985), and *RF&P v. Dept. of Taxation*, 762 F.2d at 375 (4th Cir. 1985)).

A more striking flaw in Petitioners' theory derives from the statute itself. The 4-R Act prohibits tax discrimination against railroads. It does not, however, prohibit any particular form of tax. There is nothing inherently suspect about Virginia's constitutional directive to tax

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taxed railroads' income used some form of the 3-factor apportionment formula that Virginia required other multistate corporations to use for state income tax purposes. No state then employed the "loaded car mile" formula Virginia adopted. Runke & Finder, *State Taxation of Railroads and Tax Relief Programs*, App. 2, at 71-107 (Nov. 1977) (published by The Council of State Governments) [hereinafter *State Taxation*].

real property – whether owned by railroads or other taxpayers – at fair market value. Indeed, this state law requirement dovetails with the 4-R Act.

Petitioners sought to prove that under the inventory and summation assessment the Department was about to make, the ratio of the railroad properties' fair market value to assessed value would exceed similar ratios derived for other commercial and industrial properties in Virginia by more than 5%. *See* 49 U.S.C. § 11503(c) (4-R Act standard for discrimination). Significantly, however, nothing in the language of the 4-R Act expressly limits a state's choice of methods to estimate the fair market value of railroad property.[4] Nor does other federal law limit the methods appropriate for estimating the fair market value of railroad property.

For instance, the Interstate Commerce Act recognizes that more than one methodology may be appropriate for determining the value of specific railroad properties. The Interstate Commerce Commission (the "ICC") was charged with the duty of establishing the current value of all carrier lands and the reproduction cost for "each piece" of carrier property other than land. 49 U.S.C.

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[4] This is not surprising when one considers the many accepted methods of determining the fair market value of land, as well as other property, and that more than one method often is used to estimate the fair market value of specific property at any given time. Indeed, if more than one appraisal method is used, there is nothing in the 4-R Act, or the resulting case law, that would require a state to use the least onerous method of valuing railroad property (from the railroads' perspective) if each of the methods used produced a tax assessment within the statute's acceptable range.

§§ 10781, 10782. Those statutes implicitly authorize an inventory and summation method when the goal is to measure the value of specific railroad properties. *See Southern Pacific Trans. Co. v. Commissioner*, 75 T.C. 497, 828 (1980) (indicating that ICC determinations were intended to measure fair market value). Although the 4-R Act required the ICC to submit to Congress proposed revisions to laws related to interstate commerce, the resulting legislation (P.L. 95-473, 4 U.S. Code Cong. & Admin. News, 95th Cong., 2d Sess., 3009, 3013 (1978)) did not substantively amend 49 U.S.C. §§ 10781, 10782. Thus, there was no indication that the methods contemplated thereby for determining the value of railroad assets were called into question by the 4-R Act. Since *County Board* also contemplates determining the value of specific railroad properties, it is difficult to understand how the 4-R Act now precludes Virginia from using an inventory and summation method to that end for local tax purposes.

In this context, the full reach of Petitioners' claims becomes clear. Petitioners, in effect, seek an exemption from Virginia's constitutional requirement of taxing property at its fair market value. Indeed, Petitioners do not want their specific properties taxed at all. Rather, they want Virginia to use the unit method to tax railroads as business entities. From this perspective, the conclusion of the Court of Appeals that the 4-R Act "does not provide a basis . . . to challenge a state's preferred methodology for ascertaining the . . . value of railroad property" is an understatement. The 4-R Act does not limit the objects of nondiscriminatory state taxes. The decision below should stand and it in no way precludes federal court review of properly pleaded 4-R Act claims.

B. Summary Judgment Was Appropriate Because Petitioners Did Not Meet Their Burden of Proof.

The case below also was decided correctly on summary judgment because Petitioners failed to introduce competent evidence establishing any disputed facts. Petitioners cannot justify that failure by contending that the unit method is the only way to value railroad property. There is nothing in the 4-R Act that requires states at the behest of railroads to tax the going concern value of railroad businesses rather than taxing the fair market value of the railroads' specific properties, as Virginia and several other states were doing when the 4-R Act was enacted. *State Taxation, supra* at 27. While Congress could have indicated expressly that the 4-R Act contemplated valuing property only under the unit method – a method which had been used to value railroads as business entities for approximately one hundred years, J. Bonbright, *The Valuation of Property* 637 (1937) – it did not do so.

Moreover, the unit method is not the only recognized way to value railroad property. *See* Dolman & Seymour, *Valuation of Transportation/Communication Corridors,* The Appraisal J. 509 (Oct. 1978); Zoll, *Rail Corridor Markets and Sale Factors, id.* 504 (Oct. 1991) (indicating several methods are appropriate to value railroad assets in various circumstances). Simply put, there was no reason Petitioners could not have proffered an alternative fair market value of their property in order to prove their claim without relying solely on the unit method. Having failed to take advantage of that opportunity, Petitioners are left with the hollow argument that allowing a state to select a particular method of valuing railroad property

contravenes the 4-R Act's intended purpose. It clearly does not.[5] In sum, the record does not contain any evidence from which Petitioners could establish the value of their property, a necessary element of a 4-R Act case for which Petitioners had both the burden of production and the burden of proof. That failure justified summary judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Viewed from that perspective, this case does not warrant further review.

II. There Is No Conflict Among the Circuit Courts.

Despite the egregious error Petitioners perceive in the decision below, they fail to identify any conflict within the circuit courts of appeals. Petitioners' contention (Pet. 21-23) that the court of appeal's *dicta* in *Burlington Northern R.R. v. James*, 911 F.2d 1297, 1301 (8th Cir. 1990) [hereinafter *James*] requires this Court's intervention is unpersuasive.

While the court's *dicta* in *James* may have characterized the distinction between "methodology" and "application" in these cases as "thin", 911 F.2d at 1301,

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[5] The representation in the District Court that Petitioners would not limit their case to the unit method is of no consequence. All of Petitioners' evidence of record was based on the unit method. If counsel's assurances that evidence was forthcoming were sufficient to preclude summary judgment, every case filed in federal court would be tried on the merits. *See Matsushita Electric Industrial Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (party must raise more than mere metaphysical doubt about dispute over material facts to preclude summary judgment).

there is no question that the issue in *James*, as stated by the court, was "one involving the *application* of an *accepted methodology*." *Id.* (Emphasis added). This is evident from the facts in the case. In *James*, the railroad alleged that Minnesota, which generally did not tax corporate *personal* property, included some portion of personal property in its assessment of the railroad's *real* property – an allegation which, if true, concededly would violate the 4-R Act. But the railroad expressly stipulated that it was not challenging the methodology employed by the state to derive the *value* of its property. Rather, it was challenging the application of the state's "accepted methodology" to its personal property. *Id.* at 1299. The court in *James* even assumed, for purposes of discussion, "that a challenge to valuation methodology is beyond the scope of the [4-R Act] – [and] correctly states the law in this circuit . . . " *Id.* Thus, the court's remand instructions in *James* – "that the district court make findings on whether any of [the railroads'] personal property was taxed," *id.* – creates no conflict with the decision below.

Also unpersuasive is Petitioners' reliance (Pet. 23) on district court decisions from other circuits to establish a "conflict" warranting this Court's attention. In so doing, Petitioners ignore the function of the courts of appeals within the federal judiciary. The courts of appeals provide a forum for appeals of right from trial courts within the federal system. This process serves the dual purposes of providing all litigants an opportunity for further judicial review without unnecessarily overburdening this Court.

Petitioners' erroneous assumption that "conflicts" at the district court level automatically translate into

conflicts among the circuits usurps the role of the courts of appeals and needlessly expands this Court's docket. Petitioners offer no justification for the disruption within the federal judicial system that granting their petition would encourage and endorse.[6] This case presents no real conflict, and this Court should decline further review.

III. Review by This Court Is Not Warranted.

A. The 4-R Act Does Not Permit Collateral Attacks on State Court Decisions.

The record below presents a substantial obstacle to reviewing the issues Petitioners seek to raise in this Court. The problem that Petitioners could not overcome in the District Court, and that now confronts this Court, is that the Supreme Court of Virginia, in a case in which one of the Petitioner railroads was a party, held that the unit method measures the value of a railroad as a business entity rather than the fair market value of its property. *County Board, supra.*[7] No party to that litigation

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[6] Justice Stevens recently observed in a slightly different context that "the federal judiciary has done a magnificent job of handling a truly demanding appellate workload," and noted that "only the most extraordinary circumstances" would justify this Court's intervention before giving the courts of appeals every opportunity to resolve cases properly before them. *In Re Blodgett*, 60 U.S.L.W. 3476, 3477 (Jan. 13, 1992) (not appropriate for Supreme Court to issue writ of mandamus ordering court of appeals to decide a case under advisement). For much the same reasons, this Court should withhold review unless and until an actual conflict develops among the circuits.

[7] The California Supreme Court reached the same conclusion in *ITT World Communications, Inc. v. San Francisco*, 210 Cal.

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sought further review of that decision. Since the Department had not actually assessed any railroad property after the decision in *County Board*, and that decision had not become final when Petitioners filed this suit, the effect, if not the purpose, of relying solely on unit method evidence of value was to collaterally attack the Supreme Court of Virginia's decision in *County Board* with the hope of forcing the Department to resume using the unit method. The principles of collateral estoppel and comity clearly precluded such an attack.

1. *Collateral Estoppel.* "As an aspect of a broader doctrine of *res judicata*, collateral estoppel is designed to eliminate the expense, vexation, waste and possible inconsistent results of duplicatory litigation." *Hoag v. New Jersey*, 356 U.S. 464, 470 (1958). When "determining the effect of a former judgment pleaded as an estoppel . . . [the court] must look to the pleadings making the issues, and examine the record to determine the questions essential to the decision of the former controversy." *United Shoe Machinery Corp. v. United States*, 258 U.S. 451, 459 (1922). In the courts below, Respondents argued that Petitioners could not relitigate the appropriateness of the unit method. The District Court even discussed the attempt to collaterally attack the Supreme Court of Virginia's decision with both sides during the summary judgment hearing. The Fourth Circuit noted that the case had collateral estoppel implications but did not decide

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Rptr. 226, 693 P.2d 811 (1985). *See also Wallace v. Hines*, 253 U.S. 66, 69 (1920) (questioning whether the unit method measures the value of specific real property).

the case on that basis. *Forst*, 938 F.2d at 530 n.2. Since Respondents argued in both courts below that Petitioners could not relitigate the validity of the unit method, however, the application of the doctrine of collateral estoppel also supports the Fourth Circuit's decision.[8]

In *County Board*, the issue was whether the unit method measured the value of a railroad as a business entity without ascertaining the fair market value of any specific railroad property. 240 Va. at 112-14, 393 S.E.2d at 196-97. The Virginia Supreme Court expressly held that it did. *Id.* In the case below, Petitioners had the burden of establishing the fair market value of their property. Since the only evidence Petitioners offered to establish the value of their property derived from the unit method, they had to be claiming that such method reflected its value for *ad valorem* tax purposes in Virginia. The Supreme Court of Virginia rejected that argument in *County Board*. Thus, Petitioners had to be arguing that, *County Board* notwithstanding, the unit method measured the fair market value of their property. Since any such efforts are barred by the principles of collateral estoppel, the District Court properly granted summary judgment. From that perspective, this case does not warrant further review.

2. *Comity*. Our federal system of government places great importance on the concept of comity – "a proper

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[8] Although all of the Petitioners were not parties in *County Board, supra*, they are nonetheless collaterally estoppel as being in privity with RF&P. *See Robertson v. NBA*, 622 F.2d 34, 35 (2d Cir. 1980) (members of the same class disputing the same economic concept are bound by decision even if the computation of individual benefits might differ).

respect for state functions, a recognition . . . that the entire country is made up of a Union of separate state governments, and a . . . belief that the National Government will fare best if the states . . . are left free to perform their separate functions in their separate ways." *Younger v. Harris*, 401 U.S. 37, 44 (1971). Expounding on *Younger*, this Court held in *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 13 (1987), that when the state function involves the sovereign's judicial system, the requisite respect ensures that the state court's "orders and judgments are not rendered nugatory." It is difficult to imagine a more blatant attempt to render a state court's judgment nugatory than Petitioners' resort to the federal courts here.

However styled, this suit can only be viewed as a collateral attack on the Supreme Court of Virginia's rejection of the unit method in *County Board, supra*. Indeed, merely allowing Petitioners to proceed to trial in this case effectively would have overruled *County Board* since it would have legitimatized Petitioners' claim that the unit method appropriately measures the value of specific railroad property for local tax purposes in Virginia. That is precisely the argument Petitioner RF&P presented, and had rejected, in state court. Comity precludes such a collateral attack in federal court.

Pennzoil controls here, holding that absent extraordinary circumstances, litigants may not challenge non-final state court decisions in federal court. 481 U.S. 13-15. Despite Petitioners' contention that *County Board* did not

involve any federal issue,[9] there are no extraordinary circumstances here. Indeed, this Court noted in *Pennzoil* that "when a litigant has not attempted to present his federal claims in related state court proceedings, a federal court should assume that state procedures [would] afford an adequate remedy, in the absence of unambiguous authority to the contrary." 481 U.S. at 15. Moreover, if state procedures afford an adequate remedy, attempted resort to the federal courts is inappropriate. *Id.* Since the 4-R Act gives state courts concurrent jurisdiction, comity suggests that this case was properly resolved without proceeding to trial. From that perspective, further review is not warranted.

B. Requesting a New Methodology Implicates Abstention.

Petitioners contend for the first time (Pet. 9) that after the decision in *County Board*, the Department should have tried to devise a new valuation method rather than reverting to the inventory and summation method. That contention is somewhat paradoxical since Petitioners filed this action before the Department assessed any

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[9] The localities sued in *County Board*, *supra* n.8, to stop the Department from valuing railroad property under the unit method for Virginia tax purposes. Since state courts have concurrent jurisdiction under the 4-R Act, Petitioners could have intervened and raised, or RF&P as a party could have raised, any federal claim litigated below. Hence, the only reason no federal claims were litigated in *County Board* is because Petitioners chose not to take advantage of the opportunity to raise them. Petitioners now must accept the consequences of that decision.

property, and more importantly, prevented resumption of the state court proceedings on remand. Nothing in the record indicates that the Department would not have used such proceedings to fashion a method of valuing railroad property that all interested parties (*i.e.*, the Department, all railroads, and all taxing localities) could accept. For present purposes, however, this eleventh-hour complaint provides another reason not to grant the writ.

If Petitioners are sincere about wanting the Department to fashion a new method of valuing railroad property, the remedy available to them is the state court proceedings. Since Petitioners short circuited those proceedings by filing this suit in federal court, in other circumstances a reasonable response would be merely to note that they should not now be heard to complain. Here, however, Petitioners' belated complaint after collaterally attacking the decision in *County Board* implicates the concept of abstention.

The abstention doctrine derives from the concept of comity and the proper respect for state functions within our system of federalism. In the present context, abstention embodies the national policy against unnecessary federal court interference with pending state court proceedings absent extraordinary circumstances. *Moore v. Sims*, 442 U.S. 415, 423 (1979).

Although the categories of abstention often overlap,[10] this case primarily implicates the principles of

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[10] As this Court noted in *Pennzoil*, 481 U.S. at 11 n.9, "[t]he various types of abstention are not rigid pigeonholes into

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Younger and its progeny. Under *Younger*, abstention is appropriate if federal jurisdiction is invoked to enjoin or disrupt state proceedings involving important state issues. *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 816 (1976). *Pennzoil* teaches that maintaining the state judicial systems without undue federal interference is a sufficiently important state interest to warrant, or even require, abstention. That is also true here.

The test for *Younger* abstention has three prongs: (1) whether there are ongoing state judicial proceedings; (2) whether the proceedings implicate important state interests; and (3) whether there is an opportunity in the state proceedings to raise federal claims. *Middlesex Co. Ethics Comm. v. Garden State Bar Assoc.*, 457 U.S. 423, 432 (1982). All three prongs were satisfied in the present case.

Since the ongoing judicial proceeding inquiry looks not to whether the proceedings are active, but to the filing dates of the actions (*Bettencourt v. Board of Registration*, 904 F.2d 772, 777 (1st Cir. 1990)), the first prong was

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which federal courts must try to fit cases. Rather, they reflect a complex of considerations designed to soften the tensions inherent in a system that contemplates parallel judicial processes." In the present case, the concerns noted in *Burford v. Sun Oil*, 319 U.S. 315 (1943), also are implicated, since Petitioners have disrupted the only proceedings available to develop a coherent policy for local taxation of railroad property. Since there is considerable overlap in the *Younger* and *Burford* policy considerations and since *Younger* abstention would have been appropriate even without Petitioners' eleventh-hour complaint, for present purposes, and without waiving any right to argue subsequently the implications of *Burford*, this discussion will focus solely on *Younger* abstention.

met. As noted, the state judicial proceedings implicated sufficiently important state interests to warrant abstention. *Pennzoil v. Texaco*, 481 U.S. at 13. Finally, the state court proceedings provided an adequate opportunity to raise 4-R Act claims. *See RF&P v. SCC*, 230 Va. 260, 336 S.E.2d 896.

The unique series of challenges to Virginia's *ad valorem* taxation of railroad property, and the role of the unit method therein, warrants careful analysis. In effect, Petitioners stood to accomplish in this suit, which they filed in federal court before the Supreme Court of Virginia's decision in *County Board, supra*, became final, precisely what RF&P had failed to accomplish in *County Board* – *i.e.*, to require the Department to use the unit method to value railroad property. This is a classic scenario for *Younger* abstention. Indeed, in light of the expanded nature of the *County Board* proceedings on remand,[11] the case for *Younger* abstention becomes even more compelling.

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[11] The litigation concerning how to value railroad property quickly escalated after *County Board, supra* n.8. Forty-five localities filed suits in state court against the Department and the railroads owning property within their respective jurisdictions to determine the fair market value of railroad property for 1987, 1988 and 1989. *See CSX v. Forst*, 777 F. Supp. at 441, 444 n.2. Because the Department could not complete a reassessment for 1987 before the statute of limitations expired, there was no other way to determine that value for 1987. All major railroads operating in Virginia, or their parent companies, except Consolidated Rail Corp. and North Carolina & Virginia Railroad are parties in the state court proceedings. Consolidated Rail Corp. does not own property in Virginia although it has a right-of-way over the Pentagon grounds. In 1988, North

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The state court proceedings include both localities that gain tax revenues and localities that lose tax revenues under *County Board*. Moreover, those proceedings involve as defendants all major railroads operating in Virginia. Thus, all interested parties are before the state court.[12] The Supreme Court of Virginia's remand and the inability of other localities to have the value of railroad property otherwise determined for 1987 also establish the absence of bad faith. Thus, abstention was warranted when this suit was filed. Since denying the writ would end the instant federal court displacement of the state court proceedings, the Department asserts that this is the most expeditious means of accomplishing the goals of abstention at this time.

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Carolina & Virginia Railroad owned a shortline in Southampton County that it purchased from CSX. Southampton County is a party in the state court proceedings.

[12] Since only localities that lost revenues under the unit method intervened at the District Court level, the interests of all taxing localities were not represented in that court.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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